

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

NOV 7 2001

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations
(Auburn, Alabama)

)
DOCKET FILE COPY ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

) MM Docket No. 01-104
) RM-10103
) RM-10324

To: Chief, Allocations Branch
Stop Code 1800D5

FURTHER REPLY COMMENTS
OF COX RADIO, INC. AND CXR HOLDINGS, INC.

1. Cox Radio, Inc. and its wholly-owned subsidiary CXR Holdings, Inc. (collectively "Cox"), by their attorneys, respectfully submit these further reply comments pursuant to the Commission's *Public Notice* ("Public Notice")¹ and *Notice of Proposed Rule Making* in the above-captioned proceeding ("Notice").² The *Notice* proposed the allotment of Channel 263A to Auburn, Alabama ("Auburn Proposal"), as the community's second local FM service pursuant to a Petition for Rule Making ("Petition") submitted by Auburn Network, Inc. ("Auburn Network").

¹ Consumer Information Bureau, Reference Information Center, Petition for Rule Making Filed, *Public Notice*, Report No. 2506 Correction (rel. Oct. 23, 2001) (Correcting Report No. 2506 released Oct. 5, 2001 and Oct. 9, 2001) ("Public Notice"). The *Public Notice* permits interested parties to file comments regarding Radio South, Inc.'s and Cox's counterproposals filed in this proceeding within fifteen days after the date of the Oct. 23, 2001 corrected notice. Accordingly, Cox's further reply comments are timely filed.

² In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Auburn, Alabama), *Notice of Proposed Rule Making*, DA 01-1093, MM Docket No. 01-104, RM-10103 (rel. April 27, 2001) ("Notice").

No. of Copies rec'd 014
List A B C D E

BACKGROUND

2. In response to the *Notice*, on June 18, 2001, Cox submitted its Comments and Counterproposal proposing a mutually exclusive set of interrelated allotments as a counterproposal to the Auburn Proposal (“Cox’s Counterproposal”).³ Cox’s Counterproposal set forth in detail Cox’s proposed amendments to the FM Table of Allotments, provided copies of consents from the licensees of all affected stations and pledged to reimburse the licensees for their reasonable costs in implementing the requested modifications.⁴ On June 18, 2001, Radio South, Inc. (“Radio South”) and International Systems Corp. (“ISC”) submitted counterproposals⁵ and WNNX LICO, Inc. and Tiger Communications, Inc. filed comments in response to the *Notice*.⁶ Auburn Network subsequently agreed to withdraw its interest and on July 3, 2001, filed its formal withdrawal of interest in the Auburn Proposal with the FCC.⁷

³ Comments and Counterproposal of Cox Radio, Inc. and CXR Holdings, Inc., filed in MM Docket No. 01-104, RM-10103 on June 18, 2001 (“Cox’s Counterproposal”).

⁴ *Id.* at pp. 2, 3, 18, 25, 26, 27-28, 32, 33, 37, 39 and at Exhibits A, E, F, G, I, K.

⁵ Comments and Counterproposal of Radio South, Inc., filed in MM Docket No. 01-104, RM-10103 on June 18, 2001; Counterproposal of International Systems Corp., filed in MM Docket No. 01-104, RM-10103 on June 18, 2001.

⁶ Comments of WNNX LICO, Inc., filed in MM Docket No. 01-104, RM-10103 on June 18, 2001; Comments of Tiger Communications, Inc., filed in MM Docket No. 01-104, RM-10103 on June 18, 2001.

⁷ Withdrawal of Expression of Interest of Auburn Network, Inc. dated June 18, 2001, filed in MM Docket No. 01-104, RM-10103 on July 3, 2001. On June 22, 2001, Cox filed the “Declaration of Richard A. Ferguson,” which described the circumstances of Auburn Network’s withdrawal and stated that Cox had agreed to reimburse Auburn Network for the reasonable and prudent expenses that Auburn Network has incurred in pursuing the allotment. *See* Declaration of Richard A. Ferguson filed in MM Docket No. 01-104, RM-10103, on June 22, 2001.

3. On July 3, 2001, Cox filed Reply Comments⁸ urging the Commission to dismiss the Auburn Proposal because Auburn Network had withdrawn its interest and no other party had expressed an interest in the proposed allotment. Cox also argued that the Commission should dismiss ISC's competing counterproposal to allot Channel 262A to Camp Hill, Alabama, as a first local service (the "Camp Hill Counterproposal") because the proposed facilities would not encompass the community of license with a city grade signal as required by the Commission's Rules and because ISC failed to establish that Camp Hill qualifies as a community meriting a first local service preference for the purposes of the Commission's FM allotment priorities.

4. On October 23, 2001, the Commission issued the *Public Notice* inviting interested parties to comment on Radio South's and Cox's Counterproposals. The *Public Notice* did not include ISC's Camp Hill Counterproposal, and to date, the Commission has not issued a Public Notice requesting comment on the Camp Hill Counterproposal.⁹

DISCUSSION

5. Cox hereby reconfirms its interest in its Counterproposal and reaffirms its pledge to reimburse the licensees of the other stations involved for their reasonable costs in implementing the requested modifications. Cox believes that its Counterproposal can be implemented smoothly, and upon grant of Cox's Counterproposal, Cox will work diligently with the licensees of the affected stations to take the actions necessary for a prompt implementation of the Counterproposal.

⁸ Reply Comments of Cox Radio, Inc. and CXR Holdings, Inc. filed in MM Docket No. 01-104, RM-10103 on July 3, 2001 ("Reply Comments").

⁹ Cox reserves the right to file additional comments if the Commission issues a Public Notice regarding ISC's Camp Hill Counterproposal.

6. Cox hereby incorporates by reference its Comments and Counterproposal and Reply Comments in support of its Counterproposal. As discussed therein, grant of Cox's Counterproposal would achieve a preferential arrangement of allotments under the FCC's allotment priorities because it would provide first local service to the communities of Gardendale, Jemison and Goodwater, while maintaining local service at Homewood. Moreover, Cox's Counterproposal would replace a Class A station with a superior Class C station in Homewood and would provide a "net" gain in service to 221,595 persons over an area of 6,030 square kilometers. All of the facilities modifications set forth in Cox's Counterproposal comply fully with the FCC's technical rules.

7. To the extent that the mutually exclusive Camp Hill Counterproposal continues to be under consideration by the Commission, Cox urges the Commission to dismiss the Camp Hill Counterproposal in favor of Cox's Counterproposal for the reasons set forth in its Reply Comments.

8. Cox also respectfully notifies the Commission that two of the FM stations involved in Cox's Counterproposal have changed their call signs since the initial filings in this proceeding. Effective October 17, 2001, the FM station identified in Cox's Counterproposal as WRLR(FM), Homewood, Alabama,¹⁰ changed its call sign to WODL(FM),¹¹ and the FM station identified in Cox's Counterproposal as WODL(FM), Birmingham, Alabama,¹² changed its call sign to WBPT(FM).¹³ Accordingly, in its Counterproposal, Cox proposes to substitute Channel 247C2 at Gardendale, Alabama, for Channel 247A at Homewood, Alabama, for use by the

¹⁰ See Cox's Counterproposal at 3.

¹¹ The FCC Facility ID number for WODL(FM), formerly WRLR(FM), is 71417.

¹² See Cox's Counterproposal at 18.

¹³ The FCC Facility ID number for WBPT(FM), formerly WODL(FM), is 5355.

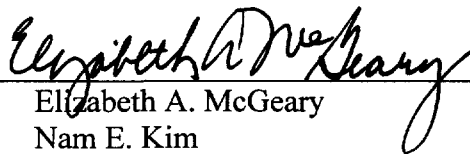
station that is now called WODL(FM) (formerly WRLR(FM)) as Gardendale's first local service,¹⁴ and proposes to reallocate Channel 295C from Birmingham to Homewood, Alabama, for use by the station that is now called WBPT(FM) (formerly WODL(FM)).¹⁵

CONCLUSION

9. Grant of Cox's Counterproposal would result in a more efficient use of broadcast spectrum than the Camp Hill Counterproposal and would greatly expand the radio service in numerous communities in Alabama. In light of the foregoing, the Commission should dismiss the mutually exclusive Auburn Proposal and Camp Hill Counterproposal and grant Cox's Counterproposal.

Respectfully submitted,

COX RADIO, INC.
CXR HOLDINGS, INC.

By: 
Elizabeth A. McGear
Nam E. Kim

Their Attorneys

DOW, LOHNES & ALBERTSON, PLLC
1200 New Hampshire Avenue, N.W., Suite 800
Washington, D.C. 20036
(202) 776-2000

November 7, 2001

¹⁴ See Cox's Counterproposal at 3-18.

¹⁵ See *id.* at 18-24.

CERTIFICATE OF SERVICE

I, Alicia R. Harris, hereby certify that a true and correct copy of the foregoing "Further Reply Comments of Cox Radio, Inc. and CXR Holdings, Inc." was sent on this 7th day of November, 2001, via first-class United States mail, postage pre-paid, to the following:

John A. Karousos*
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Auburn Network, Inc.
c/o Lee G. Petro, Esq.
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005-3317

Dale Broadcasting, Inc.
P. O. Box 909
Alexander City, AL 35051

Scott Communications, Inc.
273 Persimmon Tree Road
Selma, AL 36701

Williamson Broadcasting, Inc.
702 East Battle Street, Suite A
Talladega, AL 35161

Southeastern Broadcasting Co.
P.O. Box 1820
Clanton, AL 35045

Marengo Broadcast Associates
5256 Valleybrook Trace
Birmingham, AL 35244


Dan J. Alpert
2120 N. 21st Road
Arlington, VA 22201
(*International Systems Corp.*)

Eric T. Werner
Verner, Liipfert, Bernhard, McPherson, and
Hand
901 15th Street N.W., Suite 700
Washington, D.C. 20005-2301
(*Radio South, Inc.*)

Mark Blacknell
Pepper & Corazzini, LLP
1776 K Street, N.W., Suite 200
Washington, D.C. 20006-2334
(*Tiger Communications, Inc.*)

Mark N. Lipp
Shook, Hardy, & Bacon LLP
600 14th Street, N.W., Suite 800
Washington, D.C. 20005
(*WNNX LICO, Inc.*)

*denotes hand delivery


Alicia R. Harris